

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 941 OF 2002

Mr. Pankaj Parekh

..Petitioner

V/s.

Shree Ambika Knitting Mills
Pvt. Ltd.

..Respondents

Ms. J.M. Sidhwa i/b Mr. Manoj Bhat for the Petitioner

CORAM : ANOOP V. MOHTA,J.

DATED : 13th July, 2007

P.C.

The Petitioner has invoked section 433 of the Companies Act, 1956 as the respondent company who acknowledged its liability to the tune of Rs.10,13,617/- vide letter dated 19-9-2001 failed to pay the said amount though demanded from time to time apart from statutory notice dated 27-3-2002. The said notice was also not replied or resisted though served. Therefore, present petition has been filed on 22-4-2002.

2. By affidavit in reply to the above petition at the time of admission the defence was raised which was considered by this Court while admitting the petition

and recorded as under in order dated 27-2-2004:-

"As mentioned earlier, the said certificate corresponds with the figures as mentioned in the Books of accounts maintained by the Respondent, whereas, in the Rejoinder affidavit, the Petitioner has explained the position, and in my opinion, quite successfully, that the Respondent has approached this Court with unclean hands by producing incomplete books of account i.e. entries ending only up to 30-12-2000. Whereas, there were several other entries effected after that date, as can be seen from pages 13 and 14 of the further affidavit in rejoinder, including the credit entry effected on 31st March 2001 in the amount of Rs. 12,37,299/- (Rupees Twelve Lakhs Thirty Seven Thousand Two Hundred Ninety-nine). The account of the Respondent as produced by the Petitioner as of 31st March 2001 discloses that the closing debit balance namely, amount which is due and payable to the Petitioner was Rs. 10,22,657.88 (Rupees Ten Lakhs Twenty-two Thousand Six Hundred Fifty-seven and Eighty-eight paise). Going by the accounts maintained by the Respondent in relation to the Petitioner firm, as was made available to the Petitioner in the usual course of business, the Respondent is liable to pay a sum of Rs. 10,22,657.88 (Rupees Ten Lakhs Twenty-two Thousand Six Hundred Fifty-seven & Paise Eighty-eight) to the petitioner as on 31st March 2001."

The said order remain unchallenged. The Petitioners have complied with all the formalities of advertisement. There is affidavit of service for publication dated 25-7-2005 on record. The Respondent company thereafter except above defence as raised while approaching the admission not filed any affidavit or reply.

3. After considering the contents of the statutory notice as well as the averments made apart from the above observations as recorded by the Court while admitting the petition, I am also of the view that on the date of filing of the petition and till this date, the amount of Rs. 10,13,617/- is due and payable by the Respondents to the Petitioner as per the Books of Accounts.

4. In view of this considering the averments made and the documents filed on record, basically the acknowledgment of the liability as referred above, petitioner has made out the case.

5. Resultantly, the petition is allowed in terms of prayer clause (a). The concerned parties to take appropriate steps in accordance with law.

(ANOOP V. MOHTA,J)